

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

SHANE PHILLIP NICKERSON,

Petitioner,

vs.

JIM SALMONSEN, WARDEN  
MONTANA STATE PRISON;  
ATTORNEY GENERAL OF THE  
STATE OF MONTANA,

Respondents.

Cause No. CV 21-27-M-DWM

ORDER

State pro se petitioner Shane Philip Nickerson, pursuant to this Court's order, filed an amended petition under 28 U.S.C. § 2254, seeking habeas corpus relief. (Doc. 9.) Nickerson was subsequently ordered to show cause as to why his amended petition should not be dismissed as time-barred and procedurally defaulted. (Doc. 16.) Nickerson timely responded. See, (Docs. 17 & 20.)

Nickerson also informed the Court that he has recently been transferred from a correctional facility in South Dakota back to the Montana State Prison. (Doc. 22); see also, (Doc. 15.) Nickerson indicated that due to his incarceration in South Dakota and transfer, he has had difficulty responding to this Court's orders and accessing his legal materials. (Doc. 22.) Nickerson sought leave of the Court to file a supplement to his response to the show cause order. *Id.* at 2.

In addition to the filings referenced above, Nickerson has also filed a Motion for Leave to File Under Seal (Doc. 18), a Motion for Evidentiary Hearing (Doc. 19), and a Motion to Stay and Leave to File Amendment. (Doc. 21.)

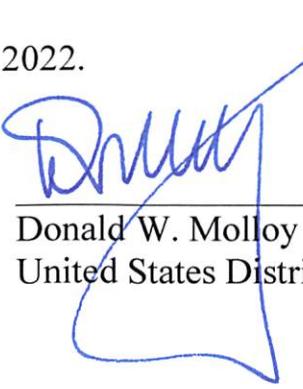
Nickerson has now filed a motion seeking voluntary dismissal of the instant action. (Doc. 27.) Nickerson explains he would like to return to state court and file a habeas action there in an effort to exhaust his new claims. *Id.* at 1-2. Nickerson seeks dismissal without prejudice. *Id.* at 2.

Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides an avenue for voluntary dismissal and Nickerson has demonstrate good cause to support his request. Accordingly, IT IS HEREBY ORDERED:

1. Nickerson's Motion to Dismiss (Doc. 27) is GRANTED. This matter is DISMISSED **without prejudice** pursuant to Fed. R. Civ. P. 41(a)(1)(B). Nickerson may return to this Court when the has fully exhausted his state remedies.

2. Nickerson's remaining motions (Docs. 18, 19, 21, 23, 24 & 25) are DENIED as moot.

DATED this 19<sup>th</sup> day of April, 2022.

  
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Donald W. Molloy  
United States District Court Judge